

1 Joseph J. Tabacco, Jr. (SBN 75484)
 2 Todd A. Seaver (SBN 271067)
 3 Matthew D. Pearson (SBN 235339)
 4 Jessica Moy (SBN 272941)
 5 Sarah Khorasanee McGrath (SBN 263935)
BERMAN TABACCO
 6 44 Montgomery Street, Suite 650
 7 San Francisco, CA 94104
 8 Telephone: (415) 433-3200
 Facsimile: (415) 433-6382
 Email: jtabacco@bermantabacco.com
 tseaver@bermantabacco.com
 mpearson@bermantabacco.com
 jmoy@bermantabacco.com
 smcgrath@bermantabacco.com

9 *Attorneys for Cambridge Capital Corporation*

10 [Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

13 IN RE CAPACITORS ANTITRUST LITIGATION 14 This Document Relates To: 15 ALL ACTIONS	Case No. 3:14-cv-03264-JD OPPOSITION TO ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED
17 DEPENDABLE COMPONENT SUPPLY CORP. 18 v. 19 MURATA MANUFACTURING CO., LTD. ET AL.	Case No. 5:18-cv-00198-EJD Judge: Hon. Edward J. Davila
20 EDJ POWERWEB, INC., ET AL. 21 v. 22 MURATA MANUFACTURING CO., LTD. ET AL.	Case No. 5:18-cv-00349-EJD Judge: Hon. Edward J. Davila
23 LIFETIME SERVICE CENTER, INC. 24 v. 25 MURATA MANUFACTURING CO., LTD. ET AL.	Case No. 5:18-cv-00511-EJD Judge: Hon. Edward J. Davila
26 CAMBRIDGE CAPITAL CORPORATION 27 v. 28 MURATA MANUFACTURING CO., LTD. ET AL.	Case No. 5:18-cv-00686-EJD Judge: Hon. Edward J. Davila

[Case No. 3:14-CV-03264-JD] OPPOSITION TO ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE REALTED

1 FIVE RIVERS ELECTRONIC INNOVATIONS
2 LLC, on behalf of itself and others similarly situated,

3 Plaintiff,

4 v.

5 KEMET CORPORATION; KEMET
6 ELECTRONICS CORPORATION; MURATA
7 ELECTRONICS NORTH AMERICA, INC.;
8 MURATA MANUFACTURING CO., LTD.; NEC
9 CORPORATION; OKAYA ELECTRIC AMERICA
10 INC.; OKAYA ELECTRIC INDUSTRIES CO.,
11 LTD.; PANASONIC CORPORATION;
12 PANASONIC CORPORATION OF NORTH
13 AMERICA; PANASONIC ELECTRONIC
14 DEVICES CO. LTD; PANASONIC INDUSTRIAL
15 DEVICES SALES COMPANY OF AMERICA;
16 SANYO ELECTRIC CO., LTD.; SANYO NORTH
17 AMERICA CORPORATION; SUMIDA
18 AMERICA COMPONENTS, INC.; SUMIDA
19 CORPORATION; SUMIDA ELECTRIC CO.,
20 LTD.; TAIYO YUDEN CO., LTD.; TAIYO
21 YUDEN (U.S.A.) INC.; TDK CORPORATION;
22 TDK-EPC CORPORATION; TDK U.S.A.
23 CORPORATION; TOKIN CORPORATION;
24 TOKIN AMERICA, INC.; TOKO INC.; and
25 JAPAN ELECTRONICS AND INFORMATION
26 TECHNOLOGY INDUSTRIES ASSOCIATION,

27 Defendants.

28 Case No. 4:18-cv-00851-KAW

Judge: Hon. Kandis A. Westmore

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Cambridge Capital Corporation submits this opposition to the Administrative Motion to Consider Whether Cases Should Be Related (“Five Rivers Motion” or “Motion”), ECF No. 2067, which seeks to relate actions presently before The Honorable Edward J. Davila that concern a different alleged conspiracy by mostly different corporate actors and affecting a different product.

Cambridge Capital Corporation is the plaintiff in *Cambridge Capital Corporation v. Murata Manufacturing Co., Ltd.*, No. 18-cv-00686-EJD (N.D. Cal., San Jose Div.). The action is one of several recently filed federal antitrust class actions that concern an alleged price-fixing conspiracy affecting inductors (the *Inductors* complaints¹).

The Five Rivers Motion should be denied because neither of the two required elements of Civil Local Rule 3-12(a) are met: (1) the cases do not concern substantially the same parties or alleged conduct; and (2) denying the motion would not result in an unduly burdensome duplication of labor and expense, or a risk of conflicting results.

There is minimal overlap in the parties and alleged conduct in the two cases and because, as the Court is aware, the parties in this action (the “*Capacitors*” action) have already been already been litigating *Capacitors* for ***over three-and-a-half years***. Relating the two cases would provide no discernable efficiencies and could delay the *Capacitors* case schedule by introducing a half dozen or more new, foreign corporate defendants as well as new plaintiff companies. Additionally, relating the cases would unduly burden both the *Capacitors* and *Inductors* parties by necessitating cumbersome coordination in order to litigate with unrelated parties, while resulting in no efficiencies or material benefit to either action.

¹ To date, four Inductors complaints have been filed and related in the first-filed action *Dependable Component Supply Corp. v. Murata Manufacturing Co., Ltd., et al.*, No. 5:18-cv-00198 (the “Inductors” action); *Powerweb, Inc. v. Murata Manufacturing Co., Ltd., et al.*, No. 5:18-cv-00349; *Lifetime Service Center, Inc. v. Murata Manufacturing Co., Ltd., et al.*, No. 5:18-cv-00511; and *Cambridge Capital Corporation v. Murata Manufacturing Co., Ltd., et al.*, No. 5:18-cv-00686. See *Inductors*, ECF Nos. 15, 19, and 52.

1 **II. LEGAL STANDARD**

2 Under Civil Local Rule 3-12(a), the district court may relate cases only if the party seeking
 3 relation demonstrates that: (1) “[t]he actions concern substantially the same parties, property,
 4 transaction or event; *and* (2) [i]t appears likely that there will be an unduly burdensome
 5 duplication of labor and expense or conflicting results if the cases are conducted before different
 6 Judges.” Civil L.R. 3-12(a) (emphasis added); *see also Hodes v. Akeena Solar, Inc. (Akeena)*,
 7 No. 09-cv-02147 JW, 2010 WL 2756536, at *1 (N.D. Cal. July 9, 2010). Because the Five Rivers
 8 Motion fails to satisfy either requirement, let alone both, this Court should deny relation.

9 **III. FIVE RIVERS MOTION FAILS TO COMPLY WITH THE LOCAL RULES**

10 As a threshold matter, the Five Rivers Motion is procedurally defective because it is
 11 devoid of any supporting declaration or stipulation as required by Local Rules. Northern District
 12 of California Civil Local Rule 3-12(b) governing the administrative motion to consider whether
 13 cases should be related requires “complying with Civil L.R. 7-11.” Civil Local Rule 7-11(a)
 14 requires that the administrative motion be accompanied “by either a stipulation under
 15 Civil L.R. 7-12 or by a declaration that explains why a stipulation could not be obtained.” Five
 16 Rivers did not file either the required stipulation or declaration with its Motion. The Ninth Circuit
 17 has recognized that this failure to comply with Civil Local Rule 7-11 requirement alone provides
 18 a basis for denial of the administrative motion. *See Tri-Valley CAREs v. U.S. Dept. of Energy*,
 19 671 F.3d 1113, 1131 (9th Cir. 2012) (denying the administrative motion under Civil Local Rule 7-
 20 11 because “[n]owhere in its motion, nor in its additional briefs, did Tri-Valley CAREs include
 21 the requisite stipulation or declaration”). The Motion can be denied on this ground alone.

22 **IV. THE ACTIONS DO NOT CONCERN SUBSTANTIALLY THE SAME PARTIES,
 23 PROPERTY, TRANSACTION, OR EVENT**

24 *Inductors* and *Capacitors* are two sets of actions that allege distinct conspiracies with
 25 respect to different component products, and the defendants named in each set of actions are not
 26 coextensive.

27 *First*, *Inductors* and *Capacitors* have minimal overlap of defendants. There is only a
 28 single overlapping defendant family, Panasonic, in the *Capacitors* litigation and the collective

1 *Inductors* actions that Five Rivers seeks to relate to it.² See *Nozolino v. Hartford Life & Acc. Ins.*
 2 *Co.*, No. 12-CV-04314-JST, 2013 WL 2468350, at *1 (N.D. Cal. June 7, 2013) (denying motion
 3 to relate cases where the cases shared a single defendant). There are four corporate families
 4 named as defendants in the *Inductors* action, which are not defendants in the analogous
 5 *Capacitors* litigation identified in the Motion.

6 Additionally, Panasonic, the sole overlapping defendant in both *Inductors* and *Capacitors*,
 7 is represented by different counsel in the *Inductors* litigation (Gibson Dunn and Crutcher) and in
 8 the *Capacitors* litigation (Winston & Strawn), further undercutting any basis for relating the
 9 matters. Furthermore, the lone overlapping plaintiff Dependable Component Supply Corp. is also
 10 represented by different counsel in both the *Inductors* (Bleichmar Fonti & Auld LLP) and
 11 *Capacitors* (Joseph Saveri Law Firm, *et al.*) litigations. See *Covarrubias v. Gower*, No. C-13-
 12 4611 EMC (pr), 2014 WL 2040020, at *3 (N.D. Cal. May 16, 2014) (denying motion to relate
 13 cases, in part, because petitioners “were represented by different attorneys”).

14 **Second**, the alleged conspiracies do not concern the same “transaction or event.” Although
 15 inductors and capacitors and resistors are both “passive electronic components,” they are
 16 unquestionably different products. See *Adobe Sys. Inc. v. A&S Elecs., Inc.*, No. C 15-2288 SBA,
 17 2016 WL 9105173, at *3 (N.D. Cal. Oct. 13, 2016) (denying motion to relate cases, in part,
 18 because “different software products are at issue in each case”). While the Five Rivers Motion
 19 asserts similarities in the respective components parts and markets, Five Rivers does not explicitly
 20 assert that the alleged inductors’ price-fixing is part of the same alleged conspiracies at issue in
 21 the *Capacitors* lawsuits.

22

23

24 ² The Motion identifies the common defendants in the Five Rivers Complaint and the analogous
 25 *Capacitors* antitrust litigation as: Okaya Electric Industries Co., Ltd., Okaya Electric America
 26 Inc., Panasonic Corporation, Panasonic Electronic Devices Co. Ltd., Panasonic Corporation of
 27 North America, SANYO Electric Co., Ltd., SANYO North America Corporation, KEMET
 28 Corporation, KEMET Electronics Corp., TOKIN Corporation, TOKIN America, Inc., and NEC
 Corporation.” Motion, at 3 n2. While the Five Rivers’ Complaint (No. 4:18-cv-00851-KAW,
 ECF No. 1 (attached as Ex. 1 to the Motion, ECF 2067-1)) names additional defendants, none of
 the other already-related *Inductors* complaints currently names any overlapping defendants in the
Capacitors litigation identified in the Motion, aside from the Panasonic defendant family.

1 Five Rivers has not identified specific facts demonstrating that the actions “concern
 2 substantially the same...transaction or event” within the meaning of Civil L.R. 3-12(a)(1). *See*
 3 *Hynix Semiconductor Inc. v. Rambus Inc.*, No. C-00-2090 RMW, 2008 WL 3916304, at *2 (N.D.
 4 Cal. Aug. 24, 2008) (denying motion to relate cases where the products and events of the cases
 5 had superficial similarities); *see also Nozolino*, 2013 WL 2468350, at *1 (two cases involving
 6 distinct ERISA claims brought by separate plaintiffs against a common defendant were not
 7 related); *Akeena*, 2010 WL 2756536, at *1 (“the Court finds that although the two actions concern
 8 substantially the same transaction and events, the legal claims, named defendants, and procedural
 9 posture are different”; relation denied, even though there was one overlapping defendant).

10 **V. THERE WILL BE NO UNDULY BURDENSONE DUPLICATION OF LABOR
 11 AND EXPENSE OR CONFLICTING RESULTS IF THE CASES ARE
 12 CONDUCTED BEFORE DIFFERENT JUDGES**

13 Nor has Five Rivers demonstrated that relation here would avoid “an unduly burdensome
 14 duplication of labor and expense.” Civil L.R. 3-12(a). Five Rivers makes no meaningful effort to
 15 explain how relation could possibly result in efficiencies. The difference in the identity of
 16 defendants alone means that the legal issues in the *Inductors* action will be unique and not
 17 susceptible to automatic application of the conclusions reached in the *Capacitors* action. Contrary
 18 to the suggestion otherwise in the Motion, at 4, there is no deduplication of judicial resources
 19 realized by prior rulings regarding issues such as personal jurisdiction or extraterritorial conduct
 20 under the Foreign Trade Antitrust Improvement Act, as any analysis of these issues will be applied
 to the facts and defendants specific to the *Inductors* case.

21 Additionally, the *Capacitors* matter has been on-going for *over three-and-a-half* years
 22 and had already advanced substantially. The first complaint in *Capacitors* was filed in July 2014
 23 (*Capacitors*, ECF No. 1). The *Capacitors*’ motions to dismiss have been decided, substantial
 24 discovery has been underway, and class certification motions and some partial summary judgment
 25 motions have been briefed. *See, e.g., Capacitors*, ECF Nos. 738 (motion to dismiss order), 739
 26 (same), 758 (discovery order re custodians), 857 (discovery order re ESI search terms), 1003
 27 (motion to dismiss order), 911 & 915 (defendants’ joint summary judgment motion), 1066 (order
 28 re additional discovery to supplement and clarify the factual record), 1423 (defendant Shoshin

1 motion for summary judgment), 1647 (order granting final approval of DPP settlements with
 2 certain defendants), 1693 (DPP class certification motion), 1745 (defendants' opposition to DPP
 3 class certification motion). By contrast, the first Inductors complaint, was filed January 9, 2018.
 4 *Dependable Component Supply Corp. v. Murata Manufacturing Co., Ltd.*, No. 5:18-cv-00198,
 5 ECF No. 1. Courts have denied relation where, as here, the first action was "further along
 6 procedurally." *Akeena Solar*, 2010 WL 2756536, at *1 (denying a motion to relate, in part,
 7 because of the different procedural posture of the two actions: "the First Action is further along
 8 procedurally, since it has already survived a Motion to Dismiss and is moving toward class
 9 certification. The Second Action was only recently filed....").

10 Relating the *Inductors* action to the *Capacitors* action will be prejudicial to and unduly
 11 burden both the *Capacitors* and *Inductors* parties by requiring them to coordinate and litigate with
 12 unrelated parties, while resulting in no efficiencies or material benefit to either action.

13 **VI. CONCLUSION**

14 For the foregoing reasons, Cambridge Capital Corporation respectfully requests that the
 15 Five Rivers' Motion to relate the *Inductors* actions to the *Capacitors* action be denied.

16 DATED: February 20, 2018

BERMAN TABACCO

17 By: /s/ Todd A. Seaver
 18 Todd A. Seaver

19 Joseph J. Tabacco, Jr.
 20 Matthew D. Pearson
 21 Jessica Moy
 22 Sarah Khorasanee McGrath
 23 44 Montgomery Street, Suite 650
 San Francisco, CA 94104
 Telephone: (415) 433-3200
 Facsimile: (415) 433-6382
 Email: jtabacco@bermantabacco.com
 tseaver@bermantabacco.com
 mpearson@bermantabacco.com
 jmoy@bermantabacco.com
 smcgrath@bermantabacco.com

1 Marc Greenspon (*pro hac vice* to be filed)
2 One Liberty Square
3 Boston, MA 02109
4 Telephone: (617) 542-8300
5 Facsimile: (617) 542-1194
6 Email: mgreenspon@bermantabacco.com

7
8 Vincent Briganti (*pro hac vice* to be filed)
9 Barbara Hart (*pro hac vice* to be filed)
10 **LOWEY DANNENBERG P.C.**
11 White Plains Plaza
12 44 South Broadway, Suite 1100
13 White Plains, NY 10601
14 Telephone: (914) 997-0500
15 Facsimile: (914) 997-0035
16 Email: vbriganti@lowey.com
17 bhart@lowey.com

18 Brian Murray (*pro hac vice* to be filed)
19 Lee Albert (*pro hac vice* to be filed)
20 **GLANCY PRONGAY & MURRAY**
21 230 Park Avenue, Suite 530
22 New York, NY 10169
23 Telephone: (212) 682-5340
24 Facsimile: (212) 884-0988
25 Email: bmurray@glancylaw.com
26 lalbert@glancylaw.com

27 *Attorneys for Cambridge Capital*
28 *Corporation*